IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 562 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAGNESH MANILAL PATEL

Versus

LADURAM KANAIYALAL JAIN

Appearance:

1. Criminal Appeal No. 562 of 1991

MR KIRIT I PATEL for Petitioner No. 1

NOTICE SERVED for Respondents No. 1-4

MR KC SHAH, APP for Respondent No. 5

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 07/03/2002

ORAL JUDGEMENT

1. Original complainant has preferred this appeal u/S. 378 (4) of the Code of Criminal Procedure (for

short 'Cr.P.C.') challenging the judgment and order of acquittal dated 27/8/1990 passed by the Ld. Metropolitan Magistrate, Court No. 11, Ahmedabad, in Criminal Case No. 684/1985.

2. The present respondents nos. 1 to 4 are the original accused of the aforesaid criminal case. The appellant had filed complaint against them on 22/8/1985 in the Court of Ld. Metropolitan magistrate, Ahmedabad for alleged commission of offence made punishable u/Ss. 341, 447, 448, 467, 504, 506 (2) read with section 114 of the Indian Penal Code (for short 'IPC'). In the complaint it has been stated that complainant owns a market known as Patel Market situated on Bhudarpura Road in the City of Ahmedabad. Respondents nos. 1 to 4 are tenants of the shops in the said market for the last 5 years prior to the date on which the present incident took place. Four shops are situated on the front side of the market. Behind those shops, there is open plot bearing no. 502 of T.P. Scheme No. 21. Respondents nos. 1 to 3 are tenants of the shop, while respondent no. 4 has set up a cabin in the margin of open plot for carrying on his tailoring business. It is further stated in the complaint that in the original plan submitted before the Town Planning Department of the Municipal Corporation, only in the front side the doors were shown. However, respondents nos. 1 to 3 tampered with the plans lying in Town Planning Office and they showed doors opening on the back side of the shops also. It is further alleged that respondents are having illegal access to the open plot which is in possession of the appellant through the back doors. He has further alleged that whenever he tried to go to the open plot, he was restrained by the respondents from doing so and not only that but he was also threatened that they would commit his murder. It is further stated in the complaint that on 5/8/1985 in the morning at about 10.00 O'clock the appellant went with mason and labourers to the open plot of the market. At that time all the aforesaid four respondents came there and restrained the appellant and the mason and the labourers from entering upon that plot on the ground that the said plot was in their possession and the appellant had no right to be there. They also gave filthy abuses and threat to kill him. It is also stated in the complaint that appellant inquired about back side opening of the shops in the Town Planning Office and also made applications to the Vigilance Department to find out the truth and he was told by the authorities that with the original plan some tampering was done and that tampering was done by the respondents nos. 1 to 4 with a view to set up doors at the back side

of the shops. On these allegations the appellant approached the Ld. Magistrate by filing the aforesaid complaint with a prayer that the concerned respondents, who are the accused of that case, should be arrested, tried and adequately punished for committing aforesaid offences. In the said complaint the appellant has also submitted list of the witnesses which he proposed to examine at the trial on behalf of the prosecution. On receiving the complaint, the Ld. Magistrate on that very day i.e. 22/8/1985 directed the Superintendent of Police, Crime Branch to carry out investigation into the matter and to submit chargesheet.

2.1. From the record of the case it clearly appears that pursuant to the said direction given by the Ld. Magistrate u/S. 156 (3) of the Cr.P.C., the Crime Branch carried out the investigation and submitted necessary chargesheet in the Court of Ld. Metropolitan Magistrate, Court No. 11 on 24/9/1985 under the signature of Police Sub Inspector, Detection of Crime Branch, Ahmedabad City. The said case was registered with the police as M. Case No. 68/1985. Upon submission of the chargesheet in the Court of the Ld. Magistrate, it was numbered as Criminal Case No. 684/1985.

3. The Ld. Magistrate framed charge against respondents nos. 1 to 4 at Exh. 2 for offences u/Ss. 341 and 506 (2) read with section 114 of the IPC. The respondents pleaded not guilty to the charge and claimed to be tried.

4. At the trial the prosecution was given enough opportunities to lead the evidence in support of its case between the period commencing from 24/9/1985 till the date on which the Ld. Magistrate passed the impugned judgment i.e. 27/8/1990. To be precise, the prosecution was given chance to keep its witnesses present and examine them on 12/8/1986, 23/9/1986, 10/10/1986, 24/10/1986, 5/7/1989, 18/8/1989, 20/9/1989, 24/10/1989, 20/11/1989, 12/12/1989, 15/1/1990, 10/8/1990 and lastly on 27/8/1990. On that date the Ld. magistrate thought it fit to close the case. He, therefore, delivered the judgment, which is under challenge in this appeal.

5. At the outset, it may be noted here that this appeal itself is not maintainable, because as stated earlier the Ld. magistrate, upon presentation of the complaint by the appellant, had passed order u/S. 156 (3) of the Cr.P.C. directing the Detection of Crime Branch, Ahmedabad, to carry out the investigation. In accordance with the direction issued by the Ld.

Magistrate, the D.C.B. had carried out the investigation and had submitted necessary chargesheet u/S. 173 of the Cr.P.C. on 24/9/1985. Based on that report, the case was registered as Criminal Case No. 684/1985 and the original complainant, namely, present appellant was replaced by the State of Gujarat as complainant and the entire prosecution was in charge of the Ld. APP attached to the said Court. It is a well settled principle of law that in such cases the private complainant has no locus-standi to file appeal u/S. 378 of the Cr.P.C. It is only the State Government which is competent to prefer appeal before this Court. The Apex Court in the decision rendered in the case of Kishan Swaroop v. Govt. of NCT of Delhi reported in AIR 1998 S.C. p. 990 has laid down that private party has no locus-standi and consequently no right to file appeal/revision u/S. 378 or 401 of the Cr.P.C. in a case instituted upon a police report. In light of this decision, it is very clear that the present appeal is totally misplaced and it cannot be entertained at the instance of private party in place of State of Gujarat, which is respondent no. 5 herein. On this ground alone, this appeal deserves to be dismissed.

6. Even considering from the point of view of merits this appeal does not have any merit because the Ld. Magistrate is absolutely within his bound to pass the impugned judgment considering the number of opportunities granted to the prosecution to examine the witnesses and to prove its case against respondents nos. 1 to 4. However, the leniency shown by the Ld. Magistrate seems to have been misused by the prosecution and despite number of opportunities having been given to it, it has not availed of even a single opportunity to commence the oral evidence. I, therefore, do not see any reason to interfere with the said judgment of the Ld. Magistrate.

7. This appeal, therefore, does not have any merit and it deserves to be dismissed and it is hereby ordered to be dismissed.

[AKSHAY H. MEHTA, J.]

* Pansala.